



August 25, 2020

Julie S. Woosley
HWS Chief
N.C. Dep't of Env'tl. Quality
217 West Jones Street
1646 Mail Service Center
Raleigh, NC 27603

via FedEx No. 7713 5031 7649

Re Public Comments, NCDEQ Issuance of Draft Permit (7/10/20)
EPA ID No. NCD070619663

Dear Ms. Woosley:

The letter you sent to me that is dated 10 July 2020 includes a fact sheet and draft RCRA Hazardous Waste Permit, and communicates your intent to issue the permit effective September 11 unless you receive comments. I presume you sent the letter to me because I represent WASCO LLC, and I am timely responding NCDEQ July 10 letter and providing the public comments and associated exhibits that are attached with this letter on behalf of WASCO (the "Comments"). I have also included a copy of the Administrative Record with the attached CD (the 2019 Documents that WASCO submitted under protest and with full reservation of all legal rights and defenses).

As described within the Comments, this NCDEQ action fails to comply with the regulations that govern the RCRA permit process, and is improper — shockingly so. The action seeks to issue a permit to an entity that is *not* the current operator of record for the subject facility, with permit conditions that require a completely new application, subject to penalties. Put another way, the action attempts to force an involuntary change of RCRA operator at the facility. But neither the U.S. EPA nor the NCDEQ have any legal authority to do that.

The draft permit also seeks to force WASCO to submit a RCRA Part A permit application within fifteen days of NCDEQ issuing the permit. But, as noted in the 2019 Documents and within the Comments, WASCO does not meet the applicability criteria for a Part A permit application. Neither the EPA nor NCDEQ have any authority to force an application submittal upon someone who does not meet the applicability criteria that are set forth in the relevant statutes or regulations.

The Comments demonstrate that EPA Region 4 is conducting RCRA Permit Writer training this week, and an NCDEQ Hazardous Waste Section ("HWS") supervisor was scheduled to help instruct. Some HWS employees are likely attending the training.¹ As noted in the Comments, that training includes sessions that indicate deficiencies in permit applications trigger Notices of Deficiencies ("NODs"). The

¹ The training agenda is the same as the EPA's June 2019 course, which HWS employees attended.

fact sheet included with the draft permit expressly notes deficiencies with the 2019 Documents. The EPA RCRA Permit Writer training includes presentations that make it clear that the action NCDEQ is authorized to take for application deficiencies is to reject the application, require the interim status applicant to cease the hazardous waste activity and close the RCRA unit / facility, and terminate interim status.² The Comments include examples of HWS's regular practice of issuing NODs in connection with RCRA permit applications. With respect to WASCO and this action, NCDEQ has entirely disregarded the regular practice it applies to other entities. Moreover, I have not been able to locate another example of EPA, NCDEQ or any other state agency doing what you have done here, i.e., identify application deficiencies and, in response, communicate an intent to issue a permit.

The Administrative Record demonstrates that HWS is responsible for entering data into EPA's national RCRA database (RCRAInfo). The Comments demonstrate that one of the HWS supervisors that reports to you is responsible for maintaining the integrity of the data that is entered into RCRAInfo. It appears that in early 2019 NCDEQ told EPA representatives that state litigation ruled that WASCO is an operator and therefore required to get a RCRA permit. But, on 05 June 2019, HWS made a manual RCRAInfo entry that identifies an entity other than WASCO as the sole current operator of the subject facility since December 2007. As of today, the EPA's publicly available RCRA information still shows that the other entity (which has no affiliation and no contractual relationship with WASCO) is the sole current operator of record for the facility, based upon the HWS June 2019 RCRAInfo update. The Comments demonstrate that one of the EPA Region 4 RCRA Permit Writer training presentations instructs the attendees that RCRA "[p]ermitting obligation is on the *current* owner and operator." That presentation is conducted by an EPA senior attorney related to the RCRA program.³

The Comments include a number of communications that I sent to the NCDEQ General Counsel earlier this year. Those communications called his attention to, among other things, the fact that WASCO is not the current operator of record for the facility, the HWS June 2019 RCRAInfo entry, and the fact that there is no record of HWS conducting any inspections of the facility for more than three years (which means HWS has failed to comply with the "mandatory inspection[]" requirements of 42 U.S.C. § 6927(e)). Additionally, I called his attention to the fact that since November 2016 HWS records for the facility posted to NCDEQ's Laserfiche public records portal identify a 2010 RCRA form submitted by the sole current operator of the facility (an entity named Dyna-Diggr, LLC) as a "Part A Application (PA)" for a RCRA "Permit (P)." That classification still exists in Laserfiche today.

The NCDEQ action related to the July 10 letter is so completely disconnected from the facts and the requirements of relevant law that your basis for moving forward with it is "because [you] say so." That is not how the process is required to work. For that reason, I am also sending copies of the Comments to various EPA officials (with tabs to the portion that communicates important clarifications re-

² The Permit Writer training addresses the different process for non-interim status applications, as no hazardous waste activity is allowed to begin unless or until a RCRA permit is actually issued.

³ It is presumed that the attorney understands and communicates the importance of the threshold applicability criteria for any such "obligation." The Administrative Record demonstrates WASCO has never met those criteria.

garding the NCDEQ representations made to EPA in early 2019). While EPA saw no reason to provide any oversight assistance regarding the 2019 Documents, the facts have dramatically changed as a result of the NCDEQ July 10 letter and your stated intent to issue a permit in a manner that fails to comply with RCRA § 3005(c) and the relevant regulations, EPA RCRA permit policy and guidance, and EPA RCRA Permit Writer training that NCDEQ HWS supervisors help instruct and HWS employees attend.

In addition to addressing the other deficiencies in the fact sheet draft permit, the Comments indicate “conditions” that WASCO physically cannot comply with as a result of being a holding company that has no employees, no physical presence in North Carolina, and no authority to control any portion or aspect of the subject facility.⁴ U.S. EPA RCRA permit policy and training state that NCDEQ cannot issue a RCRA permit under those facts.

Thank you for your consideration of these Comments.

Stay safe,



Rodney G. Huerter
VP & Senior Counsel

Attachments (Comments, Index, CD)

cc:

Michael Regan, NCDEQ Secretary

William Lane, NCDEQ General Counsel

Andrew Wheeler, U.S. EPA Administrator

Mary Walker, U.S. EPA Region 4 Administrator

Matthew Leopold, U.S. EPA

Peter Wright, U.S. EPA

Barry Breen, U.S. EPA

Bernadette Rappold, Esq., Greenberg Traurig

Sean Sullivan, Esq. Robinson Bradshaw

⁴ The draft permit itself states that fact in Appendix G, which is cited in the introductory language of Part I. Appendix G to the draft permit also states that Dyna-Diggr is the sole current operator of the facility since December 2007, and that WASCO never treated, stored or disposed of any hazardous waste at the facility and never owned or operated any business at the property. NCDEQ did not include Appendix G with the documents it posted to its website for public comment regarding the draft permit.